

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**AXION POWER BATTERY  
MANUFACTURING, INC.,**

**Plaintiff,**

**v.**

**T&L SALES, INC., BATTERYXPRESS,  
INC. and WILLIAM STOUT,**

**Defendants.**

**2: 07-cv-0224**

**ORDER OF COURT**

**AND NOW**, this 14th day of May, 2009, it is hereby **ORDERED** that pursuant to the consent of all counsel, the trial in this matter originally scheduled for July 13, 2009, has been continued to **September 8, 2009**.

It is also **ORDERED** that pursuant to Federal Rule of Civil Procedure 38(d), counsel for both parties shall each file a formal waiver of the right to a jury trial on or before **May 27, 2009**.

It is further **ORDERED** as follows:

**A. Final Pretrial Order:**

**1.** A non-jury trial is hereby scheduled on **Tuesday, September 8, 2009, at 9:00 a.m.**, in Courtroom #6C, Sixth Floor, U.S. Courthouse, 700 Grant Street, Pittsburgh, Pennsylvania 15219.

**2.** The following items shall be filed with the Clerk of Court, served upon opposing counsel and submitted to Chambers unless otherwise specified.

**3. Witness Lists:**

(a) Plaintiff shall submit a final list of trial witnesses, specifying separately those who will definitely be called and those who may be called if needed (other than purely for impeachment) on or before **August 11, 2009**.

(b) Defendants shall submit a final list of trial witnesses, specifying separately those who will definitely be called and those who may be called if needed (other than purely for impeachment) on or before **August 18, 2009**.

**4. Exhibits**

All exhibits must be marked and exchanged in advance of trial. To avoid duplication and potential jury confusion, counsel shall confer in advance of trial and agree on one joint set of consecutively numbered exhibits. Exhibits which will be offered/utilized/relied upon at trial by both plaintiff and defendants shall be marked consecutively as Joint Exhibit 1, 2, 3, etc., in numerical order. Exhibits which will be offered at trial only by plaintiff(s) shall be marked consecutively as Plaintiff(s) Exhibit 4, 5, 6, etc., and exhibits which will be offered at trial only by defendants shall be marked consecutively as Defendant(s) Exhibit 7, 8, 9, etc., in numerical order. Three copies of all premarked exhibits shall be provided to the Court in separate binders, labeled and numerically tabbed on or before **August 25, 2009**. Objections to exhibits are to be made known to the Court prior to trial and same may be ruled upon prior to trial.

Counsel are not to take time during trial to exchange exhibits. Exhibits need not be offered into evidence in numeric order. As exhibits are admitted into evidence at trial, each

exhibit (or copy thereof) shall be provided to the Courtroom Deputy Clerk for logging, safekeeping and ultimate submission to the factfinder.

Counsel are encouraged to use courtroom technology to present exhibits to the witnesses and factfinder. With advance notice and approval of the Court, visual aids and exhibits may be used during opening statements.

**5. Motions.** The parties shall file all motions in limine, including motions under Fed. R. Evid. 104(a) and motions to limit or sever issues, together with supporting briefs or memoranda of law, on or before **August 11, 2009**. Responses shall be filed on or before **August 18, 2009**. All briefs supporting or opposing such motions shall be limited to ten (10) pages.

**6. Designation of Discovery Excerpts to be Offered at Trial.** The parties shall submit designation of excerpts from depositions, interrogatory answers, and responses to requests for admission to be offered at trial (other than for impeachment or rebuttal) on or before **August 25, 2009**.

**7.** Plaintiff and Defendant may be ordered to submit proposed Findings of Fact and Conclusions of Law with supporting briefs as scheduled at the conclusion of the trial.

**8. Joint Stipulations.** The parties shall file a joint statement of stipulations on or before **August 18, 2009**. All possible stipulations shall be made as to:

- (a) Facts;
- (b) Issues to be decided;
- (c) The authenticity and admissibility of exhibits;
- (d) Expert qualifications and reports;
- (e) Deposition testimony to be read into the record;

Counsel shall meet at a mutually convenient time and place to produce the joint stipulation in time for filing as ordered.

**9. Final Pretrial Conference.** A final pretrial conference may be scheduled during the week before trial, if requested.

**B. Trial Procedures:**

1. Court will commence promptly at **9:00 A.M.** each morning. There will be a morning and afternoon recess of fifteen (15) minutes. Luncheon recess will be from approximately **12:30 P.M.** to **1:30 P.M.** Court will adjourn at **4:30 P.M.** **All counsel and witnesses are expected to be in their seats and ready to commence at the appointed times.** Court will be in session from Tuesday through Thursday, and Friday if necessary.

2. Because counsel will have previously marked and exchanged all exhibits and provided a copy to the Court, it will not be necessary during the trial to show exhibits to opposing counsel prior to using them.

3. It will not be necessary for counsel to request permission to approach a witness.

4. The Court will be available at **8:00 A.M.** (or earlier if necessary) each morning and **4:30 P.M.** each afternoon to address evidentiary or other issues. It is the responsibility of counsel to notify the court and other counsel of the need for a conference at 8:00 A.M. or 4:30 P.M. and all other counsel will be expected to be present at the appointed time for argument.

**THE COURT WILL NOT DELAY THE PROCEEDING TO RESPOND TO LAST MINUTE REQUESTS FOR CONFERENCES TO DISCUSS MATTERS WHICH, IN**

**THE EXERCISE OF REASONABLE DILIGENCE, COULD HAVE BEEN HEARD AT A MORNING OR AFTERNOON CONFERENCE.**

5. Prior to the commencement of the trial, counsel shall provide opposing counsel with the actual list of the next day's witnesses in the order they are expected to be called. The same procedure will be employed by both sides at the end of each court day.

BY THE COURT:

s/ Terrence F. McVerry  
United States District Court Judge

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